

STATE OF MICHIGAN
COURT OF APPEALS

BEST GROUP, INC.,

Plaintiff-Appellee,

v

AMERICAN/DEMCO GROUP, INC.,

Defendant/Third Party Plaintiff-
Appellant,

and

GENERAL MOTORS CORPORATION,

Third Party Defendant-Appellee.

UNPUBLISHED

January 21, 2003

No. 231182

Oakland Circuit Court

LC No. 97-545311-CK

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Defendant, American/Demco, Inc (ADI), appeals as of right a judgment entered in plaintiff's favor following the trial court's grant of plaintiff's motion for summary disposition in this contract dispute. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1993, General Motors (GM) contracted with plaintiff for the provision of general contractor services with regard to various demolition projects. GM also contracted with defendant, ADI, for the provision of general contractor services on other demolition projects. ADI then entered into subcontractor agreements with plaintiff regarding these other demolition projects. In 1997, plaintiff filed an action against GM, seeking additional compensation with regard to the work it performed as GM's general contractor, and against ADI, seeking payment of monies owed as ADI's subcontractor, which included approximately \$360,000 already paid by GM to ADI for work performed by plaintiff. Shortly thereafter, plaintiff and GM, only, entered into a written settlement agreement and GM was dismissed as a party defendant.

Subsequently, plaintiff filed an amended complaint against ADI, seeking damages for breach of contract and violation of the Builders Trust Fund Act (BTFA), MCL 570.151 *et seq.* Plaintiff and ADI filed cross motions for summary disposition, and ADI asserted that plaintiff's claim was barred by the settlement agreement between plaintiff and GM. The trial court found

that the settlement agreement entered into between GM and plaintiff was “unambiguous and that the intention of the parties was not to release BGI’s claims against ADI regarding the contract amounts already paid by GM to ADI for BGI’s benefit. The language in Section 4 clearly evidences that the Agreement did not fully resolve the payment claims excepted from the general release in Section 1b.” Accordingly, the trial court held that ADI was not relieved from its obligation to pay the amounts owed to plaintiff and summary disposition was granted in plaintiff’s favor.

On appeal, ADI argues that the settlement agreement plaintiff entered into with GM released GM as well as ADI from all of plaintiff’s claims; therefore, plaintiff was not entitled to summary disposition. We disagree. The trial court’s ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). The interpretation of a release is a question of law for the court to decide. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 13; 614 NW2d 169 (2000).

The primary goal of contract interpretation is to determine and enforce the intent of the parties. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). A well-established principal of construction is that a contract must be considered as a whole, harmonizing all parts as much as possible. *Id.*; *Czapp v Cox*, 179 Mich App 216, 219; 445 NW2d 218 (1989). In *Cole, supra*, this Court succinctly set forth the applicable rules of contract interpretation:

The scope of a release is governed by the intent of the parties as it is expressed in the release. If the text in the release is unambiguous, the parties’ intentions must be ascertained from the plain, ordinary meaning of the language of the release. A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation. The fact that the parties dispute the meaning of a release does not, in itself, establish an ambiguity. [*Id.* at 13-14 (citations omitted).]

The settlement agreement entered into by plaintiff and GM included, in Section 1.a., that GM would pay certain sums of money on certain dates “[i]n full settlement of all claims, asserted and unasserted, of BGI [plaintiff], KOHRDT [plaintiff’s vice president] and MARDIGIAN [plaintiff’s president] against GM in connection with the Projects” The agreement also included the following pertinent provisions:

1.b. BGI, KOHRDT and MARDIGIAN acknowledge that the Settlement Amount includes complete satisfaction of all claims of BGI, KOHRDT and MARDIGIAN against GM and ADI in connection with the Projects as of the date of this Agreement, including, without limitation . . . all claims that were raised or could have been raised by BGI in Circuit Court Case No. 97-545311-CK . . . and all other claims of BGI, KOHRDT and MARDIGIAN against GM, excepting only . . . (ii) payment of retention as provided under Section 7 hereof.

* * *

4. ADI: BGI and GM shall attempt to negotiate and enter into a separate Settlement Agreement and Release with ADI whereby GM has notified ADI that

claims between BGI and GM have been resolved and BGI has agreed to dismiss Oakland County Circuit Court Action No. 97-545311-CK against ADI, with prejudice and without costs or attorneys fees, and directing ADI to pay all amounts currently owing to BGI in accordance with that Settlement Agreement and Release. The parties hereto agree that execution of, and payment under, the separate Settlement Agreement and Release among BGI, GM and ADI are not conditions to the enforceability of this Agreement.

* * *

9. BGI Release and Indemnification: Except for the obligations of GM under this Agreement, BGI, on behalf of itself . . . and others claiming by or through any of them, hereby fully and forever releases, acquits and discharges GM and its officers, shareholders . . . from all manner of action, causes of action, suits, claims, and damages relating to the Project now existing or which may hereafter accrue in favor of BGI . . . by reason of any facts, whether known or unknown, existing at the date hereof. Except for the obligations of GM under this Agreement, BGI covenants that it will make no such claim and that it will indemnify, defend and hold harmless GM . . . against any such claim made by any of BGI's predecessors, successors or assigns or others

After review of the contract, we agree with the trial court that the terms of the settlement agreement were not ambiguous and that ADI was not released from liability by the agreement. The plain and ordinary meaning of the contract language, considered as a whole, was not reasonably susceptible to more than one interpretation, including an interpretation that GM and plaintiff intended to include ADI within the scope of the release. Rather, the clear intent of the parties to the contract was to settle the matter and release GM from any and all liability associated with the "Project," including liability arising as a consequence of ADI's failure to render payment to plaintiff for subcontractor services it provided to ADI. ADI's strained interpretation of the settlement agreement was, therefore, properly rejected by the trial court and plaintiff was entitled to the grant of summary disposition. See *D'Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 319; 565 NW2d 915 (1997).

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh